

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

and the Tenants' Application for Dispute Resolution under the Act for:

- a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Landlord H.E. and his partner R.E. attended the hearing for the Landlord.

Tenants B.F. and M.L. attended the hearing for the Tenants.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence**

The Tenant confirmed having received the Proceeding Package and evidence from the Landlord by Registered Mail on February 17, 2025.

The Landlord confirmed having received the Proceeding Package and evidence for the cross-application from the Tenant by Registered mail on April 7, 2025.

The Tenant confirmed having received evidence from the Landlord in response to the cross-application by Registered Mail, on or about April 12, 2025.

I find that both parties were served with the Proceeding Package and evidence for each application in accordance with sections 88 and 89 of the Act.

## Issues to be Decided

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security deposit?

Is the Landlord entitled to recover the filing fee for this application from the Tenants?

Are the Tenants entitled to recover the filing fee for this application from the Landlord?

## Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but **will refer only to what I find relevant for my decision.**

The parties agree that the tenancy began on March 1, 2024, for a fixed term ending on February 28, 2025.

The parties agree that the Tenants gave written notice to end tenancy to the Landlord on December 5, 2024, and that the tenancy ended on January 31, 2025, before the expiry of the fixed term. The Landlords expressed a willingness to try to re-rent the rental unit for January 1, 2025, but when unsuccessful, the Tenants remained until the end of January 2025. The parties completed a move-out inspection and Condition Inspection Report on February 1, 2025.

Current monthly rent at the time the tenancy ended was \$2,650.00 due on the first day of the month. The Landlord received a security deposit from the Tenants in the amount of \$1,325.00 on February 9, 2024. In addition to the security deposit, the Tenants pre-paid "first and last month's rent", which was applied to the months of March and December 2024.

The parties agree that the Tenants signed a Strata Property Act Form K acknowledging responsibility for penalties, including fines, for contraventions of strata bylaws or rules, and that the Tenants received a copy of the strata bylaws and rules from the property manager directly on February 27, 2025.

The parties agree that the Tenants consented in writing to the Landlord withholding \$200.00 from the security deposit in satisfaction on a fine levied against the Tenants by the strata of the building on April 12, 2024, with respect to "behaviour" during move-in.

The Landlord submitted a copy of three violation letters received from the strata with respect to smoking and a strata account statement documenting three fines of \$200.00 each levied on September 20, 2024, for smoking incidents "May 13 to 20", "Jul 11 & 12", and "Jul 17".

The Landlord submitted records of communication from the property manager documenting witness accounts of smoking on the balcony of the subject rental unit.

The Tenants said in their affirmed testimony that they did not and do not smoke. The Tenants responded to the property manager to say the same and to provide their own witness accounts of other tenants smoking in the building.

The Landlord advocated for the Tenants to the strata and arranged for an opportunity for the Tenants to attend at a strata meeting before council to appeal the violations. The Tenants declined to attend and participate in the meeting. The Tenants said in their affirmed testimony that they did so because of previous negative experiences with the strata council and because they had already given their response by email. The Tenants did not communicate to the Landlord that they would not attend the meeting. The strata did not reverse the levies.

The Landlord submitted a screenshot of a Craigslist advertisement that was posted December 5, 2024, which lists the subject rental unit as available January 1, 2025, at the current monthly rent of \$2,650.00. The Landlord said that they also advertised on Facebook Marketplace and submitted a screenshot of the advertisement. On December 16, 2024, the Landlord decreased the monthly rent by \$50.00, a screenshot of the updated listing was submitted.

The Landlord said in their affirmed testimony that they did not receive many responses to their rental advertisements in December 2024, and that there were no confirmed showings. In January they hosted approximately 10 showings of the unit, with most people inquiring for tenancies beginning March 1, 2025. On January 11, 2025, the signed a tenancy agreement with new tenants effective February 15, 2025, for \$2,600.00 per month. The Landlords said that at that time this was their best offer.

The Tenants submit that the subject rental unit is above market value and that few showings were hosted.

The Landlords seeks compensation for the three strata fines, monthly rent for the period of February 1 to 15, 2025, and half the discount offered to the new tenants (\$25.00).

The Tenants provided their forwarding address in writing to the Landlord on December 5, 2024, and the Landlord applied to retain the deposits on February 10, 2025, after the tenancy ended.

## Analysis

### **Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?**

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and not earlier than the date specified on the tenancy agreement as the end of the tenancy.

The Tenants were not permitted to end the tenancy earlier than February 28, 2025, the date specified on the fixed-term agreement. In doing so they breached the Act and their tenancy agreement.

The Landlord successfully re-rented the subject rental unit at a \$50.00 discount effective February 15, 2025. I find that a loss of rental income for the period of February 1 to 15, 2025, resulted from the Tenants' failure to comply with the Act and tenancy agreement, and a loss of \$25.00 rental income for the remainder of the fixed term because of the discount offered by the Landlord.

I find that the Landlord acted reasonably to minimize their loss, posting the subject rental unit immediately on two platforms, lowering the rent, and re-renting the subject rental unit as soon as possible.

Further, I find that by signing the Strata Property Act Form K, the strata bylaws and rules became part of the tenancy agreement and that the Tenants accepted responsibility for the fines levied against them.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I prefer the evidence of the Landlords, specifically the written complaints received by the property manager from other tenants with respect to smoking and find on a balance of probabilities that the Tenants breached the tenancy agreement in breaching the bylaws

and rules of the strata by smoking on three occasions. This breach resulted in damage to the Landlord in that \$600.00 of fines were levied against their account. Further, I find that the Landlords acted reasonably to minimize this loss in advocating for the Tenants and arranging an opportunity for hearing before the strata council which the Tenants declined to attend.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlord is entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, in the amount of \$1,950.00.

**Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?**

Section 38 of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. As the tenancy ended on January 31, 2025, after the forwarding address was provided in writing, and the Landlord made their application on February 10, 2025, I find that the Landlord did make their application within 15 days of the tenancy ending.

Section 72(2) of the Act states that if the arbitrator orders a tenant to pay an amount to a landlord, the amount may be deducted from any security deposit due to the tenant.

The Landlord seeks to retain the damage deposit to offset the monetary award. \$200.00 of the security deposit has already properly been withheld with the written consent of the Tenants.

Under section 72 of the Act, I allow the Landlord to retain the Tenants' remaining security deposit of \$1,125.00, plus interest of \$35.96 (calculated from February 9, 2024, to April 24, 2025), in partial satisfaction of the monetary award.

**Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security deposit?**

Section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay the security deposit or make an application for dispute resolution claiming against the security deposit.

As said above, the Landlord did apply for dispute resolution within 15 days of the tenancy ending to retain a portion of the security as required under section 38(1), and I have allowed the Landlord to retain the remaining deposit under section 72 of the Act.

Therefore, the Tenants' application for a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act is dismissed without leave to reapply.

**Is the Landlord entitled to recover the filing fee for this application from the Tenants?**

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

**Are the Tenants entitled to recover the filing fee for this application from the Landlord?**

As the Tenants were not successful in this application, the Tenants' application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

**Conclusion**

I grant the Landlord a Monetary Order in the amount of **\$889.04** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$1,950.00
authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested under section 72 of the Act	-\$1,160.96
authorization to recover the filing fee for this application from the Tenants under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$889.04</b>

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

The Tenants' application is dismissed in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 25, 2025

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Residential Tenancy Branch